

UNITED STATES DISTRICT COURT

for the

Western District of North CarolinaAsheville Division

George Murray Simmons II

Case No. 1:19-cv-39-MR-WCM

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Ingles Markets Inc
Greg Hughes

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Jury Trial: (check one) ☐ Yes ☐ NoFILED
ASHEVILLE, N.C.

FEB 04 2019

U.S. DISTRICT COURT
W. DIST. OF N.C.

COMPLAINT FOR EMPLOYMENT DISCRIMINATION

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	George Murray Simmons II	
Street Address	57 Enota Village Dr. #109	
City and County	Young Harris	Towns
State and Zip Code	Ga. 30582	
Telephone Number	&40-891-4100	
E-mail Address	gsimmon4@yahoo.com	

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name Ingles Markets Inc

Job or Title *(if known)*

Street Address 2913 US Highway 70 W

City and County Black Mountain Buncombe

State and Zip Code Nc 28711-9103

Telephone Number (828) 669-2941

E-mail Address *(if known)*

Defendant No. 2

Name Greg Huges

Job or Title *(if known)* Store General manager

Street Address 230 Highway 64 E

City and County Hayesville Clay

State and Zip Code NC 28904

Telephone Number (828) 389-4460

E-mail Address *(if known)*

Defendant No. 3

Name Jeff

Job or Title *(if known)* Night Stock Manager

Street Address 230 Highway 64 E

City and County Hayesville Clay

State and Zip Code Nc, 28904

Telephone Number (828) 389-4460

E-mail Address *(if known)*

Defendant No. 4

Name

Job or Title *(if known)*

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address *(if known)*

C. Place of Employment

The address at which I sought employment or was employed by the defendant(s) is

Name	Ingles Markets Inc	
Street Address	230 Highway 64	
City and County	Hayesville	Clay
State and Zip Code	Nc. 28904	
Telephone Number	(828) 389-4460	

II. Basis for Jurisdiction

This action is brought for discrimination in employment pursuant to *(check all that apply)*:

☐

Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

(Note: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

☐

Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 to 634.

(Note: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.)

☒

Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117.

(Note: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

☒

Other federal law *(specify the federal law)*:

Civil Rights act of 1991

☐

Relevant state law *(specify, if known)*:

☐

Relevant city or county law *(specify, if known)*:

Statement of Claim

When a complaint was filed on May 5, 2018 against a coworker for harassing new hires with comments, slurs and derogatory comments and running them over with pallet jacks. The company did step in to investigate. However the employees son who was the night manager over both of us began to retaliate against me.

Defendant Jeff the Night manager – May 6, 2018 Immediately began to threaten me with write ups and eventually moved me to an isle he knew I would not be able to do with my disability(May19,2018) and he then wrote me up for not meeting an undocumented unwritten quota (May 23,2018). When I requested an accommodation under the ADA I was placed on modified duties (May 23,2018). however Jeff took actions to change established procedures to insure delays and then subsequently would complain about the speed of things being accomplished (May 24,2018).

Defendant Greg Hughes- May 25, 2018 Refused to allow me attain and provide the documents and list of restrictions as outlined from my treating doctors and told me I had to go to an outside doctor and have them do the tests and provide a letter of limitations. He then backed up Jeff's claim of the quota for which the write up had been based but refused to provide me a copy of such quota or reference where it is documented. He used his position as general manager to selectively decide which company policies he wished to enforce and which to disregard and used that power as a means of retaliating against an employee who had gone to Corporate HR to address problems.

May 29,2018 he used the "Reasonable accommodation" clause of the ADA to justify telling me though my limitations from the doctor did not restrict my ability to do my job on the isle I had been originally doing when hired I could not return to that shift and duties. I would have to move to another shift with less hours.

Ingles Markets Inc. is ultimately responsible for the actions of its employees and as such was listed as a defendant.

My allegation is that these actions were done solely for retaliatory purposes. They were taken with the intent to violate my rights and deprive me of my ability to work.

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. The discriminatory conduct of which I complain in this action includes *(check all that apply)*:

- ☐ Failure to hire me.
- ☒ Termination of my employment.
- ☐ Failure to promote me.
- ☒ Failure to accommodate my disability.
- ☒ Unequal terms and conditions of my employment.
- ☒ Retaliation.
- ☒ Other acts *(specify)*: Threats of reprimands, changing procedures to force delays

(Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.)

B. It is my best recollection that the alleged discriminatory acts occurred on date(s)
May 6th to current

C. I believe that defendant(s) *(check one)*:

- ☒ is/are still committing these acts against me.
- ☐ is/are not still committing these acts against me.

D. Defendant(s) discriminated against me based on my *(check all that apply and explain)*:

- ☐ race _____
- ☐ color _____
- ☐ gender/sex _____
- ☐ religion _____
- ☐ national origin _____
- ☐ age *(year of birth)* _____ *(only when asserting a claim of age discrimination.)*
- ☒ disability or perceived disability *(specify disability)*
Visual Field Deficit.

E. The facts of my case are as follows. Attach additional pages if needed.

After filing a complaint regarding harassment by a coworker directed at us new hires the night manager (who was the son of the man whom the complaint was filed) began threatening writeups and changing procedures to force delays then complaining of the delays. Ultimately transferring me to another isle that he knew I would not be able to do due to my disability. Then the following week wrote me up for not being able to meet an undocumented unwritten quota. After requesting an accommodation under the ADA I was told I could not provide documents from my treating doctor I must go to an outside doctor of which had to be paid out of my pocket initially. Then stated I could not return to the position and isle I had been working I must take a different shift with less hours potentially more dangerous. See HR emails.

(Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, or the charge filed with the relevant state or city human rights division.)

IV. Exhaustion of Federal Administrative Remedies

- A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on *(date)*

October 23, 2018

- B. The Equal Employment Opportunity Commission *(check one)*:

☐

has not issued a Notice of Right to Sue letter.

☒

issued a Notice of Right to Sue letter, which I received on *(date)* 11/06/2018 .

(Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.)

- C. Only litigants alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding the defendant's alleged discriminatory conduct *(check one)*:

☐

60 days or more have elapsed.

☐

less than 60 days have elapsed.

V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

Actual Damages -\$12,180 for wages up to until I found new employment. This does not include benefits. \$50,000 for resulting expenses, stress, safety, health, risks and transportation (as my new job I have to travel 260 miles 1 way to work as opposed to 7).

Punitive Damages \$150,000. The companies actions show a clear intent to take steps to force circumstances that the company could then use to oust an employee for filing a complaint against a family member of a manager. Actions included intentionally moving me from a location where I was having no problems and moving me to a location they knew I would not be able to do due to his disability. Subsequently using an undocumented unwritten quota to justify trying to write me up ultimately forcing me to not to be able to return to work.

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 1/30/2018

Signature of Plaintiff

Printed Name of Plaintiff


George Murray Simmons II

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address